

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Federal-State Joint Board)	
on Universal Service)	CC Docket No. 96-45
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	DA 03-389
In the State of Alabama)	

Comments of CenturyTel of Alabama, LLC

CenturyTel of Alabama, LLC (“CenturyTel”), through its attorneys, hereby offers the following Comments on the Public Notice issued in the above-captioned proceeding released February 10, 2003.¹

I. INTRODUCTION

On January 29, 2003, Louisiana Unwired, LLC (“Louisiana Unwired”) filed a petition seeking approval from the Federal Communications Commission (“FCC” or “Commission”) to be designated as an eligible telecommunications carrier (“ETC”) in non-rural markets in Alabama for the purpose of receiving high-cost universal service support.²

CenturyTel, which is a new entrant to the Alabama market and is the second largest local exchange carrier in the state serving primarily rural markets purchased from Verizon, urges the FCC to ensure that the designation of Louisiana Unwired as a competitive ETC (“CETC”) does not undermine the federal universal service fund. Significantly, CenturyTel requests that the FCC defer its decision to designate Louisiana Unwired as a CETC until the FCC has resolved the

¹ Wireline Competition Bureau Seeks Comment on Louisiana Unwired, LLC Petition for Designation as an Eligible Telecommunications Carrier in Certain Non-Rural Service Areas in the State of Alabama, DA 03-389, *Public Notice*, (rel. Feb. 10, 2003) (“Public Notice”).

² Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama, filed on Jan. 29, 2003 in CC Docket No. 96-45 (“Louisiana Unwired Petition”).

issues raised in its *CETC High-Cost Support Proceeding*.³ These issues have national implications, which the FCC must first address before designating Louisiana Unwired or any other carrier as an ETC.

II. DISCUSSION

A. DESIGNATION OF LOUISIANA UNWIRED BEFORE THE FCC RESOLVES THE ISSUES RAISED IN THE *CETC HIGH-COST SUPPORT PROCEEDING* IS PREMATURE AND WILL HARM UNIVERSAL SERVICE.

1. **The FCC and the States have begun to recognize that ETC designation petitions raise questions of national importance which need to be answered in order to prevent degradation in universal service.**

In recent ETC designation orders, the Wireline Competition Bureau (“Bureau”) has recognized as important -- but nevertheless has dismissed -- numerous legitimate concerns regarding the impact on high-cost support of designating additional competitive ETCs.⁴ The Bureau has noted that these issues will be addressed in the *CETC High-Cost Support Proceeding* in which the FCC requested that the Federal-State Joint Board on Universal Service (“Joint Board”) review and provide recommendations on the FCC’s rules relating to high-cost support in study areas being served by competitive ETCs.

CenturyTel fully supports the FCC’s *CETC High-Cost Support Proceeding*, and urges the FCC to take into consideration the Joint Board’s recommendations in that proceeding

³ *Federal-State Joint Board on Universal Service*, FCC 02-307, 2002 FCC LEXIS 6052, Order (rel. Nov. 8, 2002) (“*CETC High-Cost Support Proceeding*”); *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC Designation Process*, FCC 03J-1, *Public Notice* (rel. Feb. 7, 2003).

⁴ *In the Matter of Federal State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, DA 02-3181, Memorandum Opinion and Order, at ¶3 (rel. Nov. 27, 2003) (“*RCC Order*”); *In the Matter of Federal State Joint Board on Universal Service, Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State*

before designating any new CETCs. As CenturyTel has noted in prior comments, the entire designation process is under review by the FCC in light of the numerous changes that have occurred in the telecommunications marketplace.⁵ As a consequence, designation of Louisiana Unwired and others⁶ as ETCs should be deferred until the FCC concludes the *CETC High-Cost Support Proceeding*.

As a party to numerous designation proceedings in which carriers attempt to become designated as ETCs throughout the United States, CenturyTel has observed, for example, that distributing high-cost support to CETCs based on ILEC costs as a proxy gives CETCs, particularly wireless ETCs, a significant advantage. As Western Wireless has pointed out in FCC proceedings and as the FCC itself has recognized, wireless systems can often be constructed at lower costs than wireline networks, particularly in high-cost areas.⁷ CenturyTel has first-hand knowledge of this fact having been a rural wireless provider until the recent divestiture of its wireless subsidiary.⁸ For this reason, many carriers have urged the FCC to examine whether a CETC's costs justify high-cost support.⁹ These, as well as minimum local

of Alabama, DA 02-3317, Memorandum Opinion and Order, at ¶3 (rel. Dec. 4, 2003) (“*Cellular South Order*”).

⁵ CenturyTel Comments filed in CC Docket No. 96-45 on Feb. 10, 2003; Application for Review, or Alternatively, Petition for Reconsideration of CenturyTel of Eagle, Inc. filed in CC Docket No. 96-45 on Dec. 17, 2002.

⁶ The impact of these designation proceedings grows in magnitude as CenturyTel faces new CETC designations in multiple states, often accompanied by changes to the service area.

⁷ *Promotion of Competitive Networks in Local Telecommunications Markets*, Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, 14 FCC Rcd 12673 (1999) (“... some facilities-based entry strategies show promise of surmounting the competitive advantages inherent in the incumbent LECs’ control of in-place facilities by avoiding the need to construct new, costly wireline networks. In particular, fixed wireless systems can often be constructed in less time, at lower costs, and in smaller increments than wireline networks, especially in areas where the costs of wireline links may be especially high.”).

⁸ CenturyTel Completes Sale of Wireless Operations, Press Release (rel. Aug. 1, 2002).

⁹ ACS of Fairbanks, Inc. filed a Petition for Declaratory Ruling demonstrating why high-cost loop support for CETCs should not be based on ILEC costs. ACS of Fairbanks, Inc., Petition for Declaratory Ruling and Other Relief Pursuant to Section 254(e) of the Communications Act, filed July 24, 2002.

usage and the impact on the universal service fund of using the customer's billing address to identify mobile service location, are important issues that the FCC must first address before designating additional ETCs.

2. Designation would be improper because Louisiana Unwired does not provide minimum local usage.

In recent orders, the Bureau has held that a wireless carrier's commitment to provide local usage is sufficient to conclude that the carrier will offer minimum local usage as part of its universal service offering.¹⁰ The Bureau consistently has failed to adequately consider, however, that wireless carriers often have rate plans that, at the low end, provide little or no local usage at all, while, in contrast, most wireline carriers provide unlimited local calling. Without a minimum local usage, wireless carriers may be able to maximize support payments by winning many customers with "free" or nearly free monthly access while minimizing the cost of service by discouraging its use through extremely high per-minute usage charges.

The Minnesota Public Service Commission ("MPSC") has advocated an increase in the minimum local usage afforded universal service customers. The MPSC approved Minnesota Cellular as an ETC in 1999,¹¹ requiring the carrier to file a tariff for its universal service package offering that would encompass "at least one package which includes *both* unlimited local usage or the minimum level of local usage set by the FCC and a price that does not exceed 110% of the current rates of the incumbents."¹² Unlimited local usage or service priced at rates comparable to the incumbent's enables the consumer to avoid additional per-minute fees and ensures that the consumer receives the benefits universal service is designed to

¹⁰ *RCC Order* at ¶19; *Cellular South* at ¶19.

¹¹ *In the Matter of Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Order Granting Preliminary Approval and Requiring Further Filings, Docket No. P-5695/M-98-1285, (rel. Oct. 27, 1999) ("Minnesota Order").

promote. The FCC should follow the MPSC's lead. The FCC should quickly resolve the critical issue of minimum local usage to ensure that only service offerings that meet the definition of universal service are supported. Otherwise, universal service goals could be frustrated by the proliferation of wireless ETCs, all demanding support for services that do not advance the FCC's universal service goals.

3. **Designation would be improper because the mobile nature of Louisiana Unwired's service offering undermines the universal service fund.**

The impact of the mobile nature of a service offering is an issue currently being considered by the Joint Board.¹³ CenturyTel has pointed out in other FCC proceedings¹⁴ that the FCC should give full consideration to the impact on the universal service fund of the mobile nature of a wireless CETC's service offering. The Commission's rules provide that mobile wireless ETCs "shall use the customer's billing address for purposes of identifying the service location of a mobile wireless customer in a service area."¹⁵ However, because the service area in which a customer resides may bear no relationship to the location where wireless service is actually used, high-cost support may be used to serve customers where such support is not needed, in violation of Section 254(e) of the Act -- unless certain protections are put into place. Wireless providers have the ability to measure a customer's location and should be required to submit to the FCC such information comparing the customer's billing address with the location where usage actually occurs. In addition, any policy that allows subsidies to flow to carriers that

¹² Minnesota Order at 22.

¹³ *CETC High-Cost Support Proceeding* at *14.

¹⁴ E.g., CenturyTel Comments filed in CC Docket 96-45 on Apr. 4, 2002.

¹⁵ 47 C.F.R. § 54.307(b). The Coalition of Rural Telephone Companies (CRTC) filed a petition for reconsideration of this rule. CRTC Petition for Reconsideration (filed in CC Docket 96-45, CC Docket No.

might not provide service in high-cost areas will send incorrect market signals to potential entrants. A wireless CETC may experience a windfall if it is allowed to receive high-cost support based on a rural LEC's higher average costs of the service area in which the customer's address is located, while service actually is used primarily in a relatively low-cost area. For these reasons, CenturyTel urges the Commission to adopt safeguards, similar to those that Smith Bagley stipulated to in New Mexico,¹⁶ prohibiting wireless ETC customers from using more than 25% of minutes included in the universal service plan outside of the wireless ETC's service area. Because the mobile nature of a service offering has serious implications for the universal service fund, it would be premature for the FCC to designate Louisiana Unwired before this issue has been resolved.

4. Designation would be improper given Louisiana Unwired's lack of financial stability.

While Louisiana Unwired asserts that it currently provides or will provide all of the services supported by the federal universal service program, there is a non-trivial concern that Louisiana Unwired does not possess the financial wherewithal to provide, or continue providing, such supported services in the foreseeable future.¹⁷ On February 5, 2003, Louisiana Unwired received notice from the Nasdaq Stock Market that the company's common stock

00-256 on July 5, 2001). CenturyTel filed comments in support of CRTC's petition. CenturyTel Comments (filed in CC Docket 96-45, CC Docket No. 00-256 on July 31, 2001).

¹⁶ Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e), Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation, Exhibit A (NM PRC rel. Aug. 14, 2002). The New Mexico Commission, without explanation, eliminated from the Hearing Examiner's Recommended Decision the requirement that SBI comply with its mobility stipulation. Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. 214(e), Utility Case No. 3026, Final Order (NM PRC rel. Feb. 12, 2002).

¹⁷ See SEC Form 10-Q for US Unwired Inc. (dated Nov. 15, 2002) (noting that the company may not be able to meet certain covenant requirements during 2003, and if it is unable to meet the requirements, amend the covenants, or obtain waivers, it will not be able to borrow under its senior bank credit facility, which ultimately would result in the company not having sufficient liquidity to meet business forecast without significantly reducing the company's cash expenditures to levels that may impair the future viability of the business).

would be subject to delisting from the Nasdaq National Market at the opening of business on February 10, 2003.¹⁸ The FCC historically has required authorized carriers to be not only legally qualified but also financially qualified to provide the service they propose to offer.¹⁹ Indeed, Louisiana Unwired should be required to demonstrate to the FCC that it has a viable long-term business plan, instead of resorting to the universal service fund as a federal bailout. Given Louisiana Unwired's significant financial problems, it would not be prudent for the FCC to designate a carrier that does not have the financial strength to make a long-term commitment to the relevant service areas in Alabama without first demonstrating that the carrier can provide service independent of universal service support.

B. DESIGNATION OF CARRIERS, SUCH AS LOUISIANA UNWIRED, ALSO WOULD NOT SERVE THE PUBLIC INTEREST STANDARD SET FORTH IN SECTION 214(E)(2).

Designation of carriers, such as Louisiana Unwired, in areas served by rural telephone companies for the sole purpose of promoting competitive entry does not satisfy the public interest standard in Section 214(e)(2). To the extent that carriers, particularly wireless providers, seek ETC designation in rural markets, the FCC and the states have an ongoing obligation to evaluate whether the designation of an additional ETC serves the public interest.

FCC Commissioner Jonathan Adelstein recently expressed concern that some state commissions need to exercise greater care than they have in the past in determining whether

¹⁸ Louisiana Unwired indicated in a press release on February 5, 2003, that it intends to request a hearing before a Nasdaq Listing Qualifications Panel to respond to the delisting determination. Under Nasdaq's rules, the company's common stock will continue to trade pending a decision by the panel. *US Unwired Receives Nasdaq Notice*, Press Release (dated Feb. 5, 2003). The press release is available at www.money.cnn.com/services/tickerheadlines/bw/230362439.htm.

¹⁹ 47 C.F.R. § 1.903 (stating that wireless authorizations may be granted upon proper application, provided that the Commission finds that the applicant is qualified in regard to citizenship, character, financial, technical and other criteria, and that the public interest, convenience and necessity will be served).

a competitive carrier is eligible for universal service support.²⁰ He noted the critical nature of the designation process to small carriers serving high-cost areas, adding that “it’s a key factor in allocating limited -- and shrinking -- universal service fund.”²¹ Significantly, he urged regulators to “seriously consider whether a market can support more than one carrier with universal service.”²² A high-cost market by its very nature remains high-cost even where there is competition. Commissioner Adelstein further noted that, when evaluating the public interest, the FCC and the state commissions “must ensure that the benefits that come from increasing the number of carriers we fund outweigh the burden of increasing contributions for consumers.”²³ He reminded regulators that ETC designations should not be granted “as a matter of course just because it appears they meet other qualifications.”²⁴

Some states also have begun to acknowledge problems associated with the ETC designation process. For example, last year the Utah Supreme Court upheld an order by the state’s Public Service Commission denying Western Wireless rural ETC status because the carrier’s designation as an ETC in rural areas served by ILECs would increase demands on the state universal service fund without any offsetting benefits.²⁵ The Utah Public Service Commission specifically had found that, in the absence of corresponding public benefits, increasing the burdens on the state universal service fund was not in the public interest. That some states have observed problems associated with the ETC designation process provides additional support for the Alabama Rural LECs’ plea that the FCC halt its designation of

²⁰ Remarks of Commissioner Jonathan S. Adelstein, “Rural America and the Promise of Tomorrow, NTCA Annual Meeting and Expo in Phoenix, Arizona (Feb. 3, 2003) at 3.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

additional ETCs in rural areas until it thoroughly reviews the impact of CETC high-cost support on the universal service fund.

Significantly, Section 254 requires that support be “sufficient” and “predictable.” However, with the increasing demands on universal service support by CETCs, there is widespread concern that the growth of the universal service fund may not be commensurate with the public interest benefits. Indeed, the number of carriers being designated as ETCs is escalating. For example, data released by the Universal Service Administrative Company demonstrates that, while there were 11 ETCs present in 20 ILEC markets in the first quarter of 2002, 40 ETCs are projected to be present in 325 ILEC markets by second quarter 2003. Not surprisingly, high-cost funding also has increased dramatically.²⁶ High-cost support for ETCs grew from \$9.1 million for the fourth quarter of 2001 to \$106.6 million for the first quarter of 2003.²⁷ This number is expected to continue ballooning as wireless providers nationwide seek competitive ETC status. Indeed, support received by wireless CETCs has grown from less than \$500,000 in 1999 to a projection of more than \$100 million in 2003.²⁸ The FCC has to take immediate action to get a handle on this problem. The most viable short-term remedy is to halt the designation of additional ETCs until the FCC has resolved the issues raised in the *CETC High-Cost Support Proceeding*.

III. CONCLUSION

²⁵ *WWC Holding Co., Inc., v. Public Serv. Comm’n of Utah*, No. 20000835 (Sup. Ct. filed Mar. 5 2002).

²⁶ Universal Service Administrative Company HC02 Reports for first quarter 2002 through second quarter 2003.

²⁷ Universal Service Administrative Company HC01 Reports for fourth quarter 2001 through first quarter 2003.

²⁸ Stuart Polikoff, *Universal Service in Rural America: A Congressional Mandate at Risk*, (rel. Jan. 2003) at 21.

For the foregoing reasons, CenturyTel urges the FCC to defer its decision in this proceeding until the Joint Board provides recommendations in the *CETC High-Cost Support Proceeding*. Indeed, no consumer harm will result from such a delay. The issues raised in that proceeding have national implications affecting the federal universal service fund that the FCC must first address before designating any additional ETCs. Finally, the FCC should not allow the federal universal service fund to be used as a bailout for carriers that lack a solid long-term business plan. In light of Louisiana Unwired's dubious financial future and the well-documented threats to the federal universal service fund, the FCC should defer designation of Louisiana Unwired as an ETC.

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